



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2022-0434; FRL-9821-01-OAR]

RIN 2060-AV72

Renewable Fuel Standard (RFS) Program: Alternative RIN Retirement Schedule for Small Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an alternative renewable identification number (RIN) retirement schedule for small refineries under the Renewable Fuel Standard (RFS) program for the 2020 compliance year. To provide small refineries with more time to comply with their 2020 RFS obligations (including any RIN deficits from 2019 carried forward into the 2020 compliance year), EPA is proposing a quarterly RIN retirement schedule by which a small refinery must comply with certain percentages of its 2020 RFS obligations. EPA is proposing this action because small refineries need more time to plan for compliance with their RFS obligations given EPA's delay in deciding small refinery exemption (SRE) petitions and setting the associated compliance deadlines.

DATES: *Comments.* Comments must be received on or before July 28, 2022.

Public hearing. EPA will hold a virtual public hearing on June 28, 2022. Please refer to the

SUPPLEMENTARY INFORMATION section for additional information on the public hearing.

ADDRESSES: *Comments.* You may send your comments, identified by Docket ID No. EPA-HQ-OAR-2022-0434, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method) Follow the online instructions for submitting comments.

- E-mail: *a-and-r-Docket@epa.gov*. Include Docket ID No. EPA-HQ-OAR-2022-0434 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.
The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to *<https://www.regulations.gov>*, including any personal information provided. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit *<https://www.epa.gov/dockets/commenting-epa-dockets>*.

Public hearing. The virtual public hearing will be held on June 28, 2022. The hearing will begin at 9:00 a.m. Eastern Daylight Time (EDT) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing by June 21, 2022. Information on how to register can be found at *<https://www.epa.gov/renewable-fuel-standard-program/proposed-alternative-rin-retirement-schedule-small-refineries>*. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4657; email address: *nelson.karen@epa.gov*. For questions regarding the public hearing, contact Nick Parsons at (734) 214-4479 or *RFS-Hearing@epa.gov*.

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline, diesel, and renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS ¹ Code	Examples of Potentially Affected Entities
Industry	324110	Petroleum refineries
Industry	325193	Ethyl alcohol manufacturing
Industry	325199	Other basic organic chemical manufacturing
Industry	424690	Chemical and allied products merchant wholesalers
Industry	424710	Petroleum bulk stations and terminals
Industry	424720	Petroleum and petroleum products merchant wholesalers
Industry	221210	Manufactured gas production and distribution
Industry	454319	Other fuel dealers

¹ North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation in virtual public hearing.

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, EPA cannot hold in-person public meetings at this time.

Information on how to register for the hearing can be found at <https://www.epa.gov/renewable-fuel-standard-program/proposed-alternative-rin-retirement-schedule-small-refineries>. The last day to pre-register to speak at the hearing will be June 21, 2022.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/renewable-fuel-standard-program/proposed-alternative-rin-retirement-schedule-small-refineries>. While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by June 21, 2022. EPA may not be able to arrange accommodations without advance notice.

Outline of this Preamble

- I. Background
 - A. Small Refineries and RFS Compliance
 - B. Unique Small Refinery Compliance Challenges
 - C. Overview of Proposed Compliance Approach
- II. Alternative RIN Retirement Schedule for Small Refineries for the 2020 Compliance Year
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)

- E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- IV. Statutory Authority

I. Background

A. Small Refineries and RFS Compliance

The RFS program sets annual, nationally applicable volume targets for renewable fuel. EPA translates those volume targets into compliance obligations that obligated parties must meet each year. EPA has designated refiners and importers of gasoline and diesel fuel used as transportation fuel to be those obligated parties.¹ Small refineries, a subset of refiners, are defined by the Clean Air Act (CAA or “the Act”) as “refiner[ies] for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels.”² At the start of the RFS program, Congress initially granted all eligible small refineries a temporary exemption from the obligations of the RFS program until 2011.³ Under EPA’s regulations, small refineries that were producing either “gasoline” under RFS⁴ or “transportation fuel” under

¹ 40 CFR 80.1406(a).

² CAA section 211(o)(1)(K).

³ CAA section 211(o)(9)(A)(i).

⁴ 72 FR 23900, 23926 (May 1, 2007).

RFS2⁵ were required to notify EPA that they qualified for the temporary exemption by submitting verification letters stating their average crude oil throughput rate during the applicable qualification period.⁶ The CAA provides that a small refinery may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).⁷ In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.⁸

On December 7, 2021, EPA proposed to deny 65 pending SRE petitions for the 2016–2021 compliance years⁹ and took public comment via a *Federal Register* Notice.¹⁰ That proposal included proposed changes to EPA’s interpretation of the SRE provisions in the CAA that were informed by the holdings of the U.S. Court of Appeals for the Tenth Circuit in *Renewable Fuels Association et al. v. EPA (RFA)*¹¹ and EPA’s long-held findings regarding RFS compliance costs being passed through ultimately to wholesale purchasers (generally referred to as RIN cost passthrough). Consistent with that proposal, on April 7, 2022, EPA announced the April 2022 SRE Denial,¹² which denied 36 previously-decided SRE petitions for the 2018 compliance year that had been remanded to EPA for reconsideration by the U.S. Court of Appeals for the D.C.

⁵ 40 CFR 80.1441(a)(1).

⁶ 72 FR 23900, 23925-26 (May 1, 2007); 40 CFR 80.1441(b). EPA’s regulations allowed small refineries that had submitted verification letters to qualify for the original statutory exemption under EPCA / RFS1 to not have to submit an additional verification letter to qualify under the SRE provisions in EISA / RFS2.

⁷ CAA section 211(o)(9)(B)(i).

⁸ CAA section 211(o)(9)(B)(ii).

⁹ “Proposed RFS Small Refinery Exemption Decision,” EPA-420-D-21-001, December 2021.

¹⁰ 86 FR 70999 (December 14, 2021).

¹¹ *Renewable Fuels Ass’n et al. v. EPA*, 948 F.3d 1206 (10th Cir. 2020). The court held that (1) the disproportionate economic hardship required in order to receive an SRE under the CAA must be caused by RFS compliance, (2) EPA acted arbitrarily and capriciously when it granted the SREs at issue without reconciling those decisions with the Agency’s previous findings on RIN cost passthrough, and (3) “extension” as used in the CAA SRE provisions required continuity, such that small refineries were only eligible for SREs if they had been continuously exempted from the outset of the RFS program. On September 4, 2020, the small refineries filed a petition for a writ of certiorari from the Supreme Court requesting review only of the holding regarding the meaning of “extension,” which was granted on January 8, 2021, and following oral argument, was decided on June 25, 2021, in *HollyFrontier Cheyenne Refining, LLC et al. v. Renewable Fuels Ass’n et al.*, 114 S.Ct. 2172 (2021) (*HollyFrontier*). The Supreme Court held in *HollyFrontier* that “extension” as used in the SRE provisions of the CAA does not require continuous exemption. The other holdings in *RFA* were not appealed.

¹² “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-006, April 2022.

Circuit.¹³ Then, on June 3, 2022, EPA announced the June 2022 SRE Denial,¹⁴ which denied 69 SRE petitions for the 2016–2021 compliance years that were still pending.¹⁵

B. Unique Small Refinery Compliance Challenges

We understand that some small refineries that recently received denial decisions may not be prepared to comply with their renewable volume obligations (RVOs or “RFS obligations”) for the 2020 compliance year by the applicable compliance deadlines, likely because they received SREs in recent years and assumed they would continue. Additionally, the compliance deadlines have been compressed¹⁶ and some small refineries have stated that they have been unable to acquire the RINs they need to comply with their RFS obligations.¹⁷ For these reasons, EPA believes it is appropriate to allow small refineries to carryforward their 2019 RIN deficits into the 2020 compliance year (as they are already able to do pursuant to 40 CFR 80.1427(b)), then elect to use the alternative RIN retirement schedule proposed today to meet their 2020 RFS obligations. This will give the small refineries additional time and open a broader range of RIN vintages to acquire and retire the RINs needed to demonstrate compliance for the 2020 compliance year.

C. Overview of Proposed Compliance Approach

For the reasons provided herein, we are proposing to make an alternative RIN retirement schedule available to small refineries for the 2020 compliance year to facilitate their transition into full compliance with the RFS program. This proposed alternative RIN retirement schedule

¹³ *Sinclair Wyoming Refining Co. v. EPA*, No. 19-1196 (D.C. Cir.), Dec. 8, 2021 Order, Doc. No. 1925942.

¹⁴ “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-011, June 2022.

¹⁵ More information about SREs is available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>.

¹⁶ The RFS regulations establish deadlines for obligated parties—including small refineries—to comply with their annual RVOs; the deadlines provide the dates by which obligated parties must retire sufficient RINs to comply with those RVOs and submit associated compliance reports. Under the existing RFS regulations, small refineries must comply with their 2019 RVOs by the first quarterly reporting deadline that is after the effective date of the 2021 RFS percentage standards. The 2020 compliance deadline is then tied to the next quarterly reporting deadline after the 2019 compliance deadline for small refineries, such that the annual compliance deadlines remain sequential. 40 CFR 80.1451(f)(1)(i)(B)(1) and (2). The effective date of the 2021 RFS percentage standards is generally expected to be 60 days after publication of the action establishing the 2021 standards in the *Federal Register*.

¹⁷ See, e.g., Comments on 2020-2022 RFS Rule from the Small Refinery Coalition, Docket Item No. EPA-HQ-OAR-2021-0324-0570.

would decrease the number of RINs that small refineries must acquire in the near term, extend the time period over which small refineries can plan and implement their RIN transactions, and allow the use of RINs generated in future compliance years, thereby reducing the immediate financial impacts on small refineries, as well as the impacts on the RIN market and the RFS program as a whole. While we are here proposing specific dates for the alternative RIN retirement schedule, these proposed dates presume that the annual RFS compliance deadlines will be established according to the structure in 40 CFR 80.1451(f)(1)(i)(B).¹⁸ However, the final rule that established those regulations is currently the subject of litigation.¹⁹ Thus, the reporting deadlines upon which the proposed alternative RIN retirement schedule is based may again become uncertain.

We are proposing to allow any refinery that meets the definition of “small refinery”²⁰ for the 2020 compliance year to use this alternative RIN retirement schedule, regardless of whether it submitted an SRE petition for 2020 or recently received an SRE denial. We are doing so because almost all small refineries submitted an SRE petition for 2020 that was denied in the June 2022 SRE Denial. We further believe that the proposed alternative RIN retirement schedule should be provided to all small refineries because the previous uncertainty surrounding the availability of SREs potentially affected all small refineries, which “may at any time petition” for an SRE.²¹

We believe that it is appropriate to propose this alternative RIN retirement schedule only for small refineries for their 2020 RFS obligations because it responds to the unique circumstances affecting small refineries at this time. First, the June 2022 SRE Denial only affects the RFS obligations of small refineries. Second, the uncertainty regarding how EPA would decide the SRE petitions, created by the protracted litigation and the opinions in *RFA* and

¹⁸ 87 FR 5696 (February 2, 2022).

¹⁹ *Wynnewood Refining Co., LLC, et al. v. EPA*, Consol. Case Nos. 22-1015, 22-1051 & 22-1053 (D.C. Cir. 2022).

²⁰ CAA section 211(o)(1)(K), 40 CFR 80.1401, and 80.1441(e)(2)(iii).

²¹ CAA section 211(o)(9)(B)(i).

HollyFrontier, impacted only small refineries' compliance obligations. Third, some small refineries have stated that they have not been acquiring RINs ratably while producing transportation fuels that incur an RFS obligation in anticipation of EPA granting their SRE petitions, a result that did not manifest.²² Currently, the available RINs small refineries need for compliance with their 2020 RVOs are being held in large part by other obligated parties that likely intend to use these RINs for compliance with their own RFS obligations, and those parties may not be willing to sell them.²³ For these reasons, many small refineries may not be prepared to comply by the 2020 compliance deadline. Therefore, we are proposing to provide small refineries with more time to acquire RINs and allow the use of a broader range of RIN vintages through the proposed alternative RIN retirement schedule, which we believe would help resolve some of the obstacles small refineries may currently be facing.

II. Alternative RIN Retirement Schedule for Small Refineries for the 2020 Compliance Year

The proposed alternative RIN retirement schedule is an extended period over which small refineries must acquire and retire RINs to demonstrate compliance with their 2020 RFS obligations. We are proposing a RIN retirement schedule that includes five quarterly RIN retirement deadlines that extend into the 2024 calendar year, thereby allowing small refineries to potentially use 2021, 2022, 2023, and 2024 RINs to satisfy a portion of their 2020 RVOs. We are

²² We note, however, that the RIN cost passthrough analysis presented in the April 2022 and June 2022 SRE Denials puts small refineries on notice regarding the high burden they bear when petitioning for an SRE to demonstrate that their alleged DEH is caused by compliance with the RFS program. Thus, absent a compelling demonstration that a small refinery experiences DEH caused by compliance with the RFS program, a small refinery should have no reasonable expectation that its SRE petition will be granted in the future and has no reason to again delay the acquisition of RINs to demonstrate compliance with its RFS obligations. This is a long-held position by EPA; for example, in its December 6, 2016, SRE guidance document, EPA stated that “[p]etitioning small refineries should always presume that they are subject to the requirements of the RFS program and include RFS compliance in their overall planning.” Accordingly, as has been true in the past, every small refinery should plan and prepare to demonstrate compliance with their RFS obligations unless and until they receive an exemption.

²³ RIN-holding data indicates that just four obligated parties—which represented approximately 40 percent of the 2019 total RVO—currently hold over half of all available 2019 RINs, and nine obligated parties—which represent approximately 55 percent of the 2019 total RVO—hold over three-quarters of all available 2019 RINs. Similarly, just five obligated parties currently hold over half of all available 2020 and 2021 RINs, and 11 obligated parties hold over three-quarters of all available 2020 and 2021 RINs. See “EMTS RIN Holding Data as of May 12, 2022,” available in the docket for this action. RIN holdings are presented in relation to the 2019 total RVO because this is the most recent year for which EPA has compliance data.

proposing this schedule to allow over 18 months between the June 2022 SRE Denial and the final 2020 RVO quarterly RIN retirement deadline of February 1, 2024, for small refineries to satisfy, in full, their 2020 RVOs. Table II.1 provides the proposed RIN retirement schedule and RIN vintages that can be used for each quarterly RIN retirement deadline, along with illustrative annual compliance reporting deadlines:

Table II.1 – Proposed 2020 RVO Alternative RIN Retirement Schedule with Illustrative Annual Compliance Reporting Deadlines

Milestone	Deadline	RIN Vintage						
		2018	2019	2020	2021	2022	2023	2024
2019 Compliance Deadline	September 1, 2022	C	X					
2020 Compliance Deadline	December 1, 2022		C	X				
2020 RVO RIN Retirement 1 (20%)	February 1, 2023			X	X	X	X	
2021 Compliance Deadline	March 31, 2023			C	X			
2020 RVO RIN Retirement 2 (40%)	May 1, 2023				X	X	X	
2020 RVO RIN Retirement 3 (60%)	August 1, 2023				X	X	X	
2022 Compliance Deadline	September 1, 2023				C	X		
2020 RVO RIN Retirement 4 (80%)	November 1, 2023					X	X	
2020 RVO RIN Retirement 5 (100%)	February 1, 2024					X	X	X
2023 Compliance Deadline	March 31, 2024					C	X	

X = RINs of this vintage may be used in any amount.

C = RINs of this vintage may be used to satisfy up to 20 percent of the RVO, per 40 CFR 80.1427(a)(5).

We are proposing these specific RIN retirement deadlines so that they would not overlap with other RFS compliance reporting deadlines.²⁴ We believe this approach would allow EPA staff to implement and oversee the RIN retirements more effectively and mitigate the potential for confusion on the part of participating small refineries that would have overlapping compliance reporting requirements. We are proposing specific dates for these deadlines—as opposed to tying them to the effective date of this or another RFS-related action—to provide

²⁴ The actual annual compliance reporting deadlines upon which this proposal is based may change based on the effective date of the 2021 RFS percentage standards. See 40 CFR 80.1451(f)(1)(i)(B). Should the actual 2020 compliance deadline differ from the date listed in Table II.1, we intend that the first RIN retirement deadline would not occur until after the actual 2020 compliance deadline.

greater certainty regarding the RIN retirement deadlines under the proposed alternative RIN retirement schedule.²⁵

We are proposing the five quarterly RIN retirement deadlines because this would allow small refineries additional time to acquire RINs, as well as provide small refineries with access to additional later RIN vintages, as any valid RIN at the time of retirement could be used to demonstrate compliance. In this way, the proposed alternative RIN retirement schedule strikes a balance between easing the compliance burden for small refineries while not indefinitely postponing their compliance demonstrations. The extended RIN retirement schedule and expanded RIN retirement flexibility will help individual small refineries fully comply, and in so doing will strengthen the entire RFS program following the recent rulemaking and SRE petition decision delays.

Under the proposed alternative RIN retirement schedule, a small refinery would be obligated to retire at least 20 percent of its 2020 RVOs by the first quarterly RIN retirement deadline, at least 40 percent by the second quarterly RIN retirement deadline, and so on, as laid out in Table II.1 above, such that the full 2020 RVOs must be met on the final RIN retirement deadline of February 1, 2024. For example, under this proposed alternative RIN retirement schedule, if a small refinery retired RINs sufficient to meet 30 percent of its 2020 RVOs by the 2020 compliance deadline of December 1, 2022, then it would not be obligated to retire additional RINs towards its 2020 RVOs until the second quarterly RIN retirement deadline (i.e., May 1, 2023), at which time it would be obligated to retire RINs equal to at least 40 percent of its 2020 RVOs.

We are also proposing to allow small refineries to use any valid RINs at the time of retirement for compliance, including RIN vintages after 2020 (i.e., 2021, 2022, 2023, and 2024

²⁵ It should be noted that the specific dates proposed herein have been calculated relying on the compliance deadlines established in 40 CFR 80.1451(f)(1)(i)(B), which is now the subject of litigation in the D.C. Circuit in *Wynnewood Refining Co., LLC, et al. v. EPA*, Consol. Case Nos. 22-1015, 22-1051, & 22-1053. Depending on the outcome of that litigation, the dates proposed herein for the alternative RIN retirement schedule may again become uncertain.

RINs) until such RIN vintages expire (e.g., 2021 RINs expire after the 2022 compliance deadline). This approach would allow small refineries access to additional RINs while maintaining compliance with our regulations regarding the validity and expiration of RINs.²⁶ Given the relatively small proportion of the overall demand for RINs that is represented by all small refineries (i.e., less than 10 percent of the total RVO for any given year) and that there is likely only a limited number of small refineries that would utilize the proposed alternative RIN retirement schedule, we do not anticipate that this action will have any significant impact on the overall RIN market in future years.

We are proposing to require small refineries to notify EPA of their intent to use the alternative RIN retirement schedule on or before the 2020 compliance deadline. This notice would inform EPA as to which small refineries intend to use the alternative RIN retirement schedule and would allow EPA to monitor and track the progress of the small refineries towards full compliance with their 2020 RVOs. We are proposing to require a small refinery to send us a letter signed by the responsible corporate officer expressing their intent to comply using the alternative RIN retirement schedule. We intend to acknowledge receipt of the small refinery's notification of their intent to comply using the alternative RIN retirement schedule.

Under this proposal, we would still require that participating small refineries submit a 2020 annual compliance report by the 2020 compliance deadline. The 2020 annual compliance report would be necessary to establish a small refinery's 2020 RVOs, which would be used by the small refinery to determine minimum RIN retirements for each installment under the alternative RIN retirement schedule, and for EPA to verify that the small refinery is meeting its quarterly RIN retirement obligations.

²⁶ The regulations at 40 CFR 80.1428(a) note that any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered an expired RIN. Pursuant to 40 CFR 80.1431(a), an expired RIN will be considered an invalid RIN. We are not reopening these regulations, nor the regulations associated with which RIN vintages are available for compliance under 40 CFR 1427(a). Any comments relating to these issues will be treated as beyond the scope of this action.

We are also proposing that, as a condition to use the proposed alternative RIN retirement schedule, the obligated party that owns/operates the small refinery must, on its annual RFS compliance report, provide the individual-small refinery RVO for the 2020 compliance year (i.e., comply on a refinery-basis for that small refinery). Under the RFS program, obligated parties must either comply with their RVOs on an individual-refinery basis or an aggregated basis (i.e., they combine the RVOs from all of their refineries). If an obligated party owns other refineries with RVOs in addition to the small refinery and complies on an aggregated basis, it would be unclear what portion of the aggregated RVOs apply to only the small refinery and whether the obligated party has met the RIN retirement quotas under the proposed alternative RIN retirement schedule. Therefore, as a condition for a small refinery to use the proposed alternative RIN retirement schedule, we are proposing that it must demonstrate compliance on an individual basis so that RINs can be retired for the specific small refinery's RVOs. Similarly, we are proposing that if an obligated party carries forward a RIN deficit from 2019 into 2020, that obligated party would need to comply on an individual-refinery basis for the 2019 compliance year as well. This condition would allow EPA to track the small refinery's progress towards compliance with its 2020 obligations more effectively, and would not unduly hinder obligated parties in making their compliance demonstrations.

We are not proposing any changes to the regulatory provisions governing the use of cellulosic waiver credits (CWCs). The regulations currently state that CWCs “may only be used for an obligated party's current-year cellulosic biofuel RVO and not towards any prior year deficit cellulosic biofuel volume obligations.”²⁷ We believe this approach is appropriate because, in recent years, the use of CWCs has decreased as obligated parties have largely been complying with their cellulosic RVO through RIN retirements.²⁸ Accordingly, small refineries wishing to

²⁷ 40 CFR 80.1456(b)(4).

²⁸ See Table 4: RFS2 RIN Retirements in EMTS Nested by RVO and Table 6: Cellulosic Waiver Credits Purchased Annually at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and>.

use CWCs for their 2020 cellulosic biofuel RVO must purchase and use CWCs by the 2020 compliance deadline.²⁹ Additionally, allowing small refineries to use CWCs to meet their cellulosic biofuel RVO through the alternative RIN retirement schedule (i.e., after the 2020 compliance deadline) would introduce logistical challenges for EPA and small refineries that would complicate the implementation of the proposed alternative RIN retirement schedule. Moreover, it is unlikely that modifications to the CWC regulations would provide small refineries with a meaningful benefit in complying with their RFS obligations, when viewed in light of what we have already proposed in this alternative RIN retirement schedule.

We are proposing that a participating small refinery would not be permitted to carry forward a RIN deficit from 2021 or a subsequent year into the following compliance year unless it had fully complied with its 2020 RFS obligations. We are proposing this condition as a prerequisite to carrying forward a future RIN deficit because we want to prevent the scenario in which a small refinery continuously accrues annual RIN deficits, placing it in the position where it is no longer capable of complying with its accrued RFS obligations. The proposed alternative RIN retirement schedule is intended to support small refineries in achieving and maintaining full compliance with their RFS obligations and get them on track for future compliance, not to permit them to indefinitely delay their compliance demonstrations.

We note that all of the already existing regulatory flexibilities for small refineries—including the ability to satisfy up to 20 percent of their 2019 RVOs using 2018 carryover RINs under 40 CFR 80.1427(a)(5) and the ability to carry forward a RIN deficit from 2019 to 2020 if they did not carry forward a RIN deficit from 2018 under 40 CFR 80.1427(b)—would continue to be available under the proposed alternative RIN retirement schedule. It should also be noted that other current RFS regulations will also remain in effect, including that small refineries that use 2018 RINs to meet up to 20 percent of their 2019 RVOs must do so by the 2019 compliance

²⁹ 40 CFR 80.1456(c)(2).

deadline because 2018 RINs expire after the 2019 compliance deadline and become invalid.³⁰ Similarly, any 2019 RINs that a small refinery uses to satisfy up to 20 percent of its 2020 RVOs must be retired for compliance by the 2020 compliance deadline because 2019 RINs expire after the 2020 annual compliance deadline and become invalid.³¹ We are not proposing to modify these regulations and any comments suggesting that EPA make changes to these provisions will be considered beyond the scope of this action.

As described above, participating small refineries would still be able to use any valid RINs at the time of retirement under the proposed alternative RIN retirement schedule. We believe that this proposed approach would encourage participating small refineries to retire a maximum number of 2019 RINs for their 2020 RVOs while providing flexibility for small refineries to obtain and retire valid RINs for 2021, 2022, 2023, and 2024 to satisfy their 2020 RVOs.

To help implement the alternative RIN retirement schedule for participating small refineries, we intend to assist parties with procedures for submitting forms that they would use. For example, we plan to leverage existing forms and procedures for the submission of reports and transactions under our e-reporting systems. Due to the limited number of small refineries, we plan to work individually with participating small refineries. To further help communicate this alternative RIN retirement schedule for small refineries, we also intend to post the deadlines for the final alternative RIN retirement schedule on our website.³²

We are requesting comment on all aspects of the proposed alternative RIN retirement schedule for small refineries as described and defined in this notice. For example, we seek comment on the appropriate number and size of the RIN retirement installments included in the schedule (e.g., whether five quarterly installments are too many or too few or whether we should

³⁰ 40 CFR 80.1427(a)(6), 80.1428(c).

³¹ 40 CFR 80.1427(a)(6).

³² Information related to annual compliance and attest engagement reporting is available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/reporting-fuel-programs>.

require a different percentage of RIN retirements at each deadline). We also seek comment on the proposed condition that participating small refineries may not carry forward a RIN deficit for future years until their 2020 RVOs have been fully satisfied.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2718.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information to be collected is necessary to implement the proposed alternative RIN retirement schedule for small refineries. As part of this proposal, a participating small refinery would submit a notification to EPA indicating that the small refinery would use the proposed alternative RIN retirement schedule and maintain records related to the determination and retirement of RINs under the proposed alternative RIN retirement schedule. We estimate that 13 small refineries would use the proposed alternative RIN retirement schedule.

Respondents/affected entities: small refineries

Respondent's obligation to respond: Mandatory in order to receive compliance flexibility under section 80.1444 of this proposed rule.

Estimated number of respondents: 39³³

Frequency of response: Notification letters would typically be a one-time response.

Recordkeeping is performed on occasion, and as needed.

Total estimated burden: 19 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,710, all of which is labor costs, and which includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this proposed rule is any significant adverse economic impact on small

³³ We note that under this proposed alternative RIN retirement schedule, each participating small refinery would have to submit a notification letter, keep records of the submitted notification letter, and keep records of the methods and variables used to determine RIN retirements under the proposed alternative RIN retirement schedule. For purposes of estimating burden associated with reporting and recordkeeping as a result of this proposal, we count each small refinery three times. Because we estimate that 13 small refineries would elect to take advantage of the proposed alternative RIN retirement schedule, we estimate that the total number of respondents under this collection would be 39.

entities and that the agency is certifying that this rulemaking will not have a significant economic impact on a substantial number of small entities if the proposed rule has no net burden on the small entities subject to the proposed rule. This action reduces burden to small refineries by creating an alternative RIN retirement schedule for their 2020 RVOs. As small refineries have no obligation to use the proposed alternative RIN retirement schedule, there is no additional cost to small refineries if they simply comply with the existing regulatory schedule. We do not anticipate that there will be any costs associated with these changes and that the alternative RIN retirement schedule may reduce costs. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed \$100 million in any one year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule only affects RFS obligated parties. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action proposes to provide small refineries with an alternative RIN retirement schedule to meet their 2020 RVOs. There are no additional costs for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does establish an environmental health or safety standard. This action addresses the 2020 compliance deadline for small refineries only and does not impact the RFS standards themselves.

IV. Statutory Authority

Statutory authority for this action comes from section 211(o) of the Clean Air Act, 42 U.S.C. sections 7545(o).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Penalties, Petroleum, Renewable fuel, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGISTRATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

2. Add §80.1444 to read as follows:

§80.1444 Alternative RIN retirement schedule for small refineries.

(a) *Applicability.* The provisions of this section apply to the following compliance years:

(1) 2020.

(2) [Reserved]

(b) *Eligibility.* (1) Any obligated party that has a refinery that meets the requirements for a small refinery under §80.1441(e)(2)(iii) for the applicable compliance year in paragraph (a) of this section (hereinafter the “applicable compliance year”) is eligible to use the provisions of this section for each small refinery it operates (hereinafter the “small refinery”).

(c) *Treatment of RVOs.* (1) In lieu of retiring sufficient RINs under §80.1427(a) to demonstrate compliance with the small refinery’s RVOs for the applicable compliance year by the applicable compliance deadline, the obligated party must meet all the requirements of this section and all other applicable requirements of this subpart.

(2) If the obligated party does not meet all of the requirements in this section, the obligated party is subject to the requirements of §80.1427(a).

(d) *Individual facility compliance.* (1) If the obligated party carries a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for both the previous compliance year and the applicable compliance year.

(2) If the obligated party does not carry a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for the applicable compliance year.

(e) *Compliance report submission and notification.* The obligated party must do all the following by the annual compliance reporting deadline specified in §80.1451(f)(1)(i) for the applicable compliance year (hereinafter the “applicable compliance deadline”):

(1) Submit an annual compliance report for the small refinery for the applicable compliance year.

(2) Notify EPA in a letter signed by the responsible corporate officer (RCO) or RCO delegate, as specified at 40 CFR 1090.800(d), of its intent to use the provisions of this section for the small refinery.

(f) *Alternative RIN retirement schedule.* The obligated party must retire sufficient RINs to satisfy the minimum percentages of each and every RVO for the applicable compliance year (as determined under §80.1407(a)) according to the following RIN retirement schedule:

(1) 2020 compliance year:

Table 1 to paragraph (f)(1) – 2020 Compliance Year RIN Retirement Schedule

Minimum 2020 RVOs Percentage RIN Retirement	Deadline
20%	February 1, 2023
40%	May 1, 2023
60%	August 1, 2023
80%	November 1, 2023
100%	February 1, 2024

(2) [Reserved]

(g) *RIN vintages and retirements.* (1) The obligated party may retire for compliance any valid RINs at the time of retirement towards the small refinery’s RVOs for the applicable compliance year and is exempt from the requirements in §80.1427(a)(6)(i).

(2) The obligated party must not retire for compliance any prior-year RINs for the small refinery's RVOs after the applicable compliance deadline.

(h) *Deficit carry-forward for subsequent compliance years.* The obligated party may not carry forward any deficit under §80.1427(b) for the small refinery for compliance years after the applicable compliance year until it has retired sufficient RINs to satisfy each and every RVO for the applicable compliance year in its entirety.

(i) *Forms and procedures.* The obligated party must submit annual compliance reports and retire RINs under this section using forms and procedures specified by EPA under §§80.1451(j) and 80.1452(d).

3. Amend §80.1454 by adding paragraph (a)(7) to read as follows:

§80.1454 What are the recordkeeping requirements under the RFS program?

(a) * * *

(7) Any obligated party that uses the provisions of §80.1444 for a small refinery must keep the following records:

(i) Copies of any notifications submitted to EPA under §80.1444(e)(2).

(ii) Copies of the methods and variables used to calculate the number of RINs retired for the alternative RIN retirement schedule under §80.1444(f).

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